

TABLE OF CONTENTS
AGREEMENT CONCERNING SOLID WASTE

ARTICLE 1. DEFINITIONS; DELEGATION OF AUTHORITY	1
1.1 General	1
1.2 Administration of Agreement	2
1.3 Definitions	2
ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE	3
2.1 Corporate Status	3
2.2 Corporate Authorization	3
ARTICLE 3. EFFECTIVE DATE, TERM , AND EXTENSION OF AGREEMENT	3
3.1 Effective Date	3
3.2 Term	4
3.3 Extension	4
3.4 Termination	4
ARTICLE 4. FRANCHISE	4
4.1 Grant of Franchise: Scope of Franchise	4
4.2 Relationship to State Law	5
4.3 Franchise Fee	5
ARTICLE 5. WASTE COLLECTION SERVICES	6
5.1 General	6
5.2 Contingency Plan	6
5.3 Residential Solid Waste Collection Services	6
5.4 Multi-Family Central Collection Services	8
5.5 Commercial/Industrial Collection	8
5.6 City Facilities Collection	9
5.7 Additional Services to be Provided	9
5.8 Community Clean-up Day	10
5.9 Franchisee's Inability to Provide Service	10
5.10 Hours of Collection	11
5.11 Collection Standards	11
5.12 Litter Abatement	11
5.13 Collection, Transportation and Disposal of Solid Waste	12

5.14 Processing of Solid Waste	12
5.15 Vehicles	13
5.16 Cleaning and Maintenance	13
5.17 Solid Waste Containers	14
5.18 Personnel	15
5.19 Hazardous Waste	16
5.20 Review of Performance and Quality of Service and Industry Changes	16
ARTICLE 6. OTHER COLLECTION-RELATED SERVICES, STANDARDS AND AGREEMENTS	17
6.1 Billing	17
6.2 Annual Reports	18
6.3 Annual Audit	19
6.4 Record Keeping	19
6.5 Inspection by City	19
6.6 Public/Customer Service and Accessibility	19
6.7 Service Complaints	20
6.8 City's Right to Change Scope of Work	21
6.9 Title to Solid Waste	21
6.10 Nondiscrimination	21
6.11 Change in Collection Schedule	21
6.12 Report Accumulation of Solid Waste: Unauthorized	21
ARTICLE 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989 (AB 939): OPERATIONAL AND REPORTING REQUIREMENTS	22
7.1 Curbside Recycling Program	22
7.2 Other Recycling Programs	22
7.3 Solid Waste Diversion	23
7.4 Annual AB 939 Reporting Requirements	23
7.5 AB 939 Staffing	24
7.6 Public Outreach Program	24
7.7 Waste Composition Studies	24
7.8 Use of Recycled Materials	24
7.9 Change in Laws	25
ARTICLE 8. SERVICE RATES AND REVIEW	25
8.1 Franchisee's Rates: General	25

8.2 Rate Review	25
8.3 Rate Formula	26
8.4 Special Rate Review.	27
8.5 Publication of Rates	28
ARTICLE 9. INDEMNITY, INSURANCE, BOND	28
9.1 Indemnification of City	28
9.2 Insurance	29
ARTICLE 10. CITY'S RIGHT TO PERFORM SERVICE	31
10.1 General	31
10.2 Duration of City's Possession	32
ARTICLE 11. DEFAULT AND REMEDIES	33
11.1 Events of Default	33
11.2 Right to Terminate Upon Default	34
11.3 Possession of Property Upon Termination	34
11.4 City's Remedies Cumulative: Specific Performance	34
11.5 Excuse from Performance	35
11.6 Right to Demand Assurances of Performance	36
ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES	36
12.1 Relationship of Parties	36
12.2 Compliance with Law	36
12.3 Governing Law	37
12.4 Jurisdiction	37
12.5 Assignment	37
12.6 Subcontracting	38
12.7 Binding on Successors	38
12.8 Parties in Interest	38
12.9 Waiver	38
12.10 Franchisee's Investigation	38
12.11 Notice	38
12.12 Representative of the Parties	39
12.13 Transition to Next Franchisee	39
12.14 Conflict of Interest	39
12.15 Effect on Other Agreements	39

ARTICLE 13. MISCELLANEOUS AGREEMENTS	40
13.1 Entire Agreement	40
13.2 Section Headings	40
13.3 References to Laws	40
13.4 Interpretation	40
13.5 Amendment	40
13.6 Severability	40
13.7 Counterparts	41

AGREEMENT CONCERNING SOLID WASTE

THIS Agreement, made and entered into as of the 25th day of April, 1996, by and between the CITY OF ENCINITAS, a municipal corporation, hereinafter referred to as "the City," and Mashburn Waste & Recycling Services, Inc., hereinafter referred to as "Franchisee";

WITNESSETH

WHEREAS, the Encinitas Municipal Code defines and regulates the collection of solid waste, recyclables, yard waste, and other compostables within the City; and

WHEREAS, the City is authorized to amend the Municipal Code to implement the intent of this Agreement, and

WHEREAS, the City is authorized to provide collection of solid waste, recyclables, yard waste, and other compostables within the City by Agreement; and

WHEREAS, the City, for the purpose of ensuring the continued protection and preservation of the public health, welfare, and convenience of the people of the City, deems it advisable to provide for the collection of solid waste, recyclables, yard waste, and other compostables within the City by Agreement with Mashburn Waste & Recycling Services, Inc.; and

WHEREAS, state law mandates the City to meet the diversion requirements of AB 939 or face stiff fines and penalties; and

WHEREAS, this Agreement will supersede all other agreements for solid waste, recyclables, yard waste, and other compostables collection services in the City of Encinitas (except those that may exist through other public institutions); and

WHEREAS, City desires to maintain maximum flexibility in this Agreement to meet rapidly changing solid waste disposal and diversion laws and regulations.

NOW, THEREFORE, in consideration of the premises and of the covenants and conditions hereinafter contained, the City and the Franchisee mutually agree as follows:

ARTICLE 1. DEFINITIONS; DELEGATION OF AUTHORITY

1.1 General

Whenever any term used in this Agreement has been defined by the provisions of the Encinitas Municipal Code, the definitions contained in said Code shall govern the

meaning of such words for the purpose of this Agreement, unless any such word is otherwise specifically defined herein or unless it is obvious from the context hereof that another meaning is necessarily intended.

1.2 Administration of Agreement

The administration of this Agreement shall be under the supervision and direction of the Director of Public Works and the actions specified here shall be taken by the Director of Public Works or his designees unless otherwise stated or specified.

1.3 Definitions

A. The term "bulky item" means stoves, refrigerators, water tanks, washing machines, broken or discarded furniture, rubbish and debris from building construction, rocks, sod, earth and other bulky materials. Bulky items eligible for curbside pickup on normal collection days include items weighing no more than 50 pounds, no longer than four (4) feet in length, and no greater than three (3) feet in diameter.

B. The term "garbage" means all animal and vegetable refuse from kitchens and household waste that shall have been prepared for, or intended to be used as, or shall have resulted from the preparation of food; all table refuse; and every accumulation of animal and vegetable refuse that attends the preparation, consumption, decay, dealing in or storage of meats, fish, fruits or vegetables.

C. The term "hazardous waste" as it is used in this Agreement, shall define any substance that is defined as 'hazardous waste,' 'hazardous materials,' 'extremely hazardous waste,' 'restricted hazardous waste,' 'and 'toxic substances' in Title 22 of the California Code of Regulations and Title 40 of the Code of Federal Regulations, and any other local, state, for Federal law or under the regulations adopted or publication promulgated pursuant thereto.

D. The term "household hazardous waste" as it is used in this Agreement, shall define any unused or leftover portion of products containing toxic chemicals. Any product used for maintaining a private residence which is labeled Caution, Warning, Danger, Poison, Toxic, Flammable, or Corrosive, is considered a "household hazardous waste."

E. The term "refuse" includes garbage, commercial garbage and rubbish, excepting therefrom hazardous or bulky items.

F. The term "recyclables," as it is used in this Agreement, shall mean "recyclable materials" as defined in Encinitas Municipal Code and shall refer only to recyclable material that has been discarded, thrown away, or abandoned by its owner.

Newspapers, bottles and cans that an owner has set out for curbside pickup are examples of discarded recyclables.

G. The term "rubbish" means combustible and non-combustible rubbish.

H. The term "solid waste" includes all items that are not included in recycling or green waste programs that are abandoned for collection and disposal in landfills. Collectively, the terms "garbage," "refuse," and "rubbish" are used nearly interchangeably in this document to identify that material which is presently delivered for burial at a properly operated and permitted solid waste disposal landfill.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE

Franchisee represents and warrants the following:

2.1 Corporate Status

Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Corporate Authorization

Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the shareholders if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so.

ARTICLE 3. EFFECTIVE DATE, TERM , AND EXTENSION OF AGREEMENT

3.1 Effective Date

The effective date of this Agreement shall be the date on which the City executes the document.

3.2 Term

The term of this Agreement shall be for seven years, and shall commence on April 25, 1996 and expire on April 24, 2003.

3.3 Extension

A. Notwithstanding the foregoing, Franchisee agrees that the City may, at City's option, extend the term of this Agreement, on the same terms and conditions.

B. The option to extend will be for an additional two years beginning April 25, 2003 through April 24, 2005. City may exercise this option only by delivering written notice to the Franchisee on or before October 25, 2002.

C. If the first option is exercised, then the City may, at City's option, extend the term of this Agreement, on the same terms and conditions by an additional two years beginning April 25, 2005 through April 24, 2007.

3.4 Termination

This Agreement may be terminated in accordance with the provisions herein.

ARTICLE 4. FRANCHISE

4.1 Grant of Franchise: Scope of Franchise

A. Grant of Franchise. The City hereby grants a franchise to the Franchisee, in accordance with the terms and provisions herein.

B. Annexations. This right extends to any territory annexed to the City hereafter except to the extent that collection within such territory so annexed would be unlawful or violate the legal rights of another person. Unless Franchisee acquires or has acquired the collection rights of any other person then collecting solid waste, recyclables, yard waste, or other compostables within any annexed territory at the time such annexation is effective, said exclusive right in each annexed territory shall commence ninety (90) days after each such annexation is completed, provided that if the City determines to the contrary by majority vote of its Council within said ninety (90) day period, such determination shall prevail.

C. Scope of Franchise. This franchise authorizes Franchisee to engage in the business of collecting solid waste, recyclables, yard waste and other compostables

accumulating within the current boundaries of the City and that is required to be offered to the Franchisee for collection in accordance with this Agreement and the Encinitas Municipal Code. This franchise does not authorize Franchisee to remove the following:

1. By-products of sewage treatment, including sludge, grit and screenings.
2. Residue or non-processable waste from solid waste disposal facilities including material recovery, composting and transformation facilities, except as set out under the Section regarding Solid Waste Diversion.
3. Hazardous Waste.

4.2 Relationship to State Law

This Agreement is intended to carry out City's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, ("AB 939") as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board ("Regulations"), as they from time to time may be amended. In the event that AB 939 or other state or federal laws or regulations enacted after this Agreement has been enacted, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

4.3 Franchise Fee

The Franchisee agrees to pay to the City a franchise fee of five (5) percent of the gross receipts ("Gross Receipts" shall mean all gross income or gross revenues received by Grantee from the collection and disposal of refuse or collection and sale of recyclable materials) earned by the Franchisee under this Agreement during each fiscal year ending June 30, or fraction thereof that this Agreement is in effect. Said sums shall be payable quarterly on or before the 15th day of January, April, July, and October throughout the duration of this Agreement and the total amount paid each year shall be appropriately adjusted based on the annual reports required by this Agreement. The sums herein agreed to be paid to the City by the Franchisee shall be in lieu of any and all business license, permit or truck fees that are collected by the City.

ARTICLE 5. WASTE COLLECTION SERVICES

5.1 General

A. The services set out here are in addition to those set forth in the Article of this Agreement regarding the California Integrated Waste Management Act of 1989 and the remainder of this Agreement. The work to be done by Franchisee pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Franchisee of the duty to furnish all others, as may be required, whether enumerated or not.

B. Franchisee warrants that it has all applicable state, regional, and federal permits and licenses to perform its services under this Agreement, including, but not limited to, local land use approvals, County of San Diego collector permits, and truck operating permits. The work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous and high-quality solid waste, recyclables, yard waste and other compostables collection and diversion services at all times. Franchisee

C. The California Public Resources Code requires the City to prepare and implement a Source Reduction and Recycling Element (RE) and Household Hazardous Waste Element (HHWE). Franchisee shall be responsible for implementing all provisions of these plans applicable to the waste management services specified in this Agreement.

5.2 Contingency Plan

Franchisee shall submit to City upon request a written contingency plan demonstrating Franchisee's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster or other emergency including the events described in the Article in this Agreement on Default and Remedies.

5.3 Residential Solid Waste Collection Services

A. Franchisee shall collect and deliver to the appropriate solid waste facility all solid waste, recyclables, yard waste, and other compostables generated at single- and multi-unit residential premises within the City and delivered for collection not less than once per week.

B. Service to residential customers will also include an annual community cleanup event described in this Agreement.. Also included will be collection and recycling, at no additional charge, of telephone books and Christmas Trees. Dates and times for these additional services will be coordinated with the Director of Public Works and communicated to residential customers via billing inserts. Recyclable materials will be sorted by residents in containers provided by the hauler and placed at the curb -- except as otherwise specified in this Agreement. The City may, at its discretion, add other materials to be recycled during the term of this Agreement.

C. Materials shall be properly placed for collection under the requirements of the Encinitas Municipal Code. Residents shall be required to bundle and tie all wood waste in lengths not to exceed four (4) feet with a diameter of three (3) feet. Any materials not properly placed for collection shall be tagged by the Franchisee with a Spanish/English tag explaining the reason for non-collection.

D. Special On-Call Pickup of Items

1. Franchisee shall provide special collection and proper disposal of bulky items:

Furniture - chairs, sofas, mattresses, rugs, etc.

Appliances - washers, dryers, water heaters, plumbing, refrigerators, TVs, small household appliances, etc.

Residential - wood waste - tree branches, scrap wood, debris from building construction, rocks, sod, earth, etc. (not to exceed 1 cubic yard each collection)

2. Franchisee shall use its reasonable best efforts to divert/recycle all such items or instruct its customers in appropriate diversion techniques.

3. The availability of this special on-call service and associated prices will be published by the Franchisee and distributed at least annually to all customers.

4. Franchisee shall provide a written certificate to City verifying the proper disposal of refrigerators or other appliances that contain freon or other hazardous material.

F. Roll-out "Scout" Service. Franchisee shall provide special manual carry-out services for those residents desiring such service and may charge for this service based upon Franchisee's annual rate schedule.

G. Christmas Tree Collection. Franchisee shall collect all Christmas trees on the first two scheduled pickup days after New Year's. Christmas Trees need not be

cut to four-foot length by customers to be eligible for disposal. Trees shall be diverted by Franchisee for deposit at a green waste or composting facility.

5.4 Multi-Family Central Collection Services

A. Multi-Family Container/Bin Service Weekly pick-up of rubbish at central locations on the complex premises from standard bins (dumpsters) for multi-family residential complexes where bills for service are sent to a complex owner, central manager, or association. Included will be collection of recyclables and yard waste. Multi-family residents will be provided one container to place within their unit for commingled recyclables. Multi-family residents will further sort recyclables into centrally located containers. The City may, at its discretion, add other materials to be recycled during the term of this Agreement in which event such action shall constitute a change in scope or work subject to the provisions herein concerning special rate review.

B. Multi-Family Special On-Call Service. Special collection of bulky items shall be provided on the same basis as that provided to single family.

C. Christmas Tree Collection. Franchisee shall arrange with complex manager/association -- as may be appropriate to the facility -- to collect all Christmas trees during the first two (2) weeks after New Year's. Christmas Trees need not be cut to four-foot length by occupants to be eligible for disposal. Trees shall be diverted by Franchisee for deposit at a green waste or composting facility. Franchisee will notify customers by mail of the dates of collection for Christmas trees and that trees placed outside that collection window, to be eligible for curbside collection, must be prepared as wood waste, e.g., cut to four foot lengths and bundled. The Franchisee may in addition identify sites for centralized collection (drop-off) of Christmas trees but must ensure that at no time during the collection period will trees be allowed to accumulate outside of containers.

5.5 Commercial/Industrial Collection

A. Franchisee shall collect and deliver to the appropriate solid waste facility all solid waste, recyclables, yard waste, and other compostables generated at commercial, industrial, or agricultural premises within the City contracting for services and delivered to a bin or otherwise properly placed for collection not less than once per week. Franchisee shall use its reasonable best efforts to divert or recycle materials collected under this Subsection.

B. Service to commercial customers will include providing suitable bins for the collection and disposal of general refuse according to a frequency as individually contracted by the customer. This service will also include collection and recycling of green waste, aluminum, newspaper, glass, plastic, metal cans, cardboard, mixed paper, and office ledger paper. The City may, at its discretion, add other materials to be

recycled during the term of this Agreement. The Franchisee shall provide consulting services -- at no additional charge -- to commercial, industrial and multi-family (central collection bins) customers to assist in setting up effective recycling and waste minimization programs.

C. Container/ Bin Service. Container/bin service, one (1) cubic yard to six (6) cubic yard bins, available with frequency of collection of one (1) to six (6) days per week. (Other bin sizes and frequency of service may be added from time to time.)

D. Industrial Debris Box Service. Provide rental and servicing of debris boxes (40 cubic yards) to industrial customers on both a scheduled and unscheduled (or on-call) basis. (Other debris box sizes may be added from time to time to the list of services available to customers.)

5.6 City Facilities Collection

A. At no cost to the City, Franchisee shall collect and dispose of all solid waste, recyclables, yard waste, and compostables generated at premises owned and/or operated by the City -- including all City parks, bus stops -- or as otherwise designated by the City. Franchisee shall make collections from cans Monday through Friday or on Saturdays following non-working holidays. commercial (bin) and industrial (debris box) collections shall be scheduled as designated by the City. Pursuant to this provision, City may request bins, pickup and disposal or diversion for up to six community events per year sponsored at least in part by City.

B. In addition, Franchisee shall pick-up any bulky items, as defined in this Section, discarded on or along City right-of-way, open space or other City property within 24 hours of oral request from City requesting such service. The City will exhaust all other avenues so as to limit such requests but estimates that such items amount to no more than fifteen 40-cubic yard containers annually.

C. The services required by this Section shall be provided at no charge to the City but the cost of providing them shall be an allowable expense under the rate review process provided in this Agreement.

5.7 Additional Services to be Provided

A. Special Bin Service. Three (3) cubic yard bins and roll-off containers will be made available to all customers on a rental basis for one-time, short-term requirements.

B. Special Container Service. Bins and containers will be offered to all customers on special or regular service with locking lid set-up. The service charge will be the same for all customers as if charged for regular monthly service.

C. Complaint Handling. The Franchisee shall be responsible for all customer billing, complaint handling, and other services as described in this Agreement. Additionally, operational data, as defined in this Agreement and as required by AB 939, shall be provided to the City by the Franchisee. The Franchisee will provide an on site mobile field supervisor, equipped with a mobile telephone, who will be expected to respond -- when required -- to customers within two working hours of a complaint being registered with the Franchisee's customer service desk.

5.8 Community Clean-up Day

A. On one day of each calendar year during the term of this Agreement, Franchisee shall coordinate and provide a "Community Clean Up Day" at which Franchisee shall accept and dispose from residential customers, at no cost to the customer, items such as, but not limited to, the following items, and other items of a similar nature.

Furniture - chairs, sofas, mattresses, rugs, etc.

Appliances - washers, dryers, water heaters, plumbing fixtures, refrigerators, TVs, small household appliances, etc.

Residential Wood Waste - tree branches, scrap wood, etc.

B. The Community Clean-up Day does not include the collection or disposal of auto parts and bodies, liquid wastes, manure, rocks, sod, and concrete and similar materials, soil, tires, Hazardous Waste and Biomedical Waste.

C. Franchisee may impose a surcharge for the removal of refrigerators or other appliances that contain freon or other hazardous waste. Franchisee shall provide a written certificate to City verifying the proper disposal of refrigerators or other appliances that contain freon or other hazardous material.

D. Franchisee shall also, upon City's request, provide a plan for recovering reusable and recyclable materials offered for collection as part of the "Community Clean Up Day" and for recycling at the source.

5.9 Franchisee's Inability to Provide Service

If at any time during the effective period of this Agreement, should a customer request bin service for construction or demolition cleanup which the Franchisee cannot render within two full working days from the date of the customer's initial request for service, the Director of Public Works reserves the right to direct such customer to seek other providers who can provide such collection service regardless of the fact that such other provider does not hold a franchise with City for collection services.

5.10 Hours of Collection

Collection of solid waste may occur only within hours authorized by the Municipal Code.

5.11 Collection Standards

A. Care of Private Property. Reasonable care shall be used by the Franchisee's employees in handling all privately owned collection containers and enclosures. All collection containers after emptying thereof by the Franchisee's employees shall be returned to within five (5) feet of the location from which the same were picked up by the Franchisee's employees, upright with lids properly placed to insure same are not deposited in any driveway, sidewalk, or street. Franchisee shall ensure that its employees close all gates opened by them in making collections, unless otherwise directed by the customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. City shall refer complaints about damage to private property to Franchisee.

B. Noise. All solid waste, recyclables, yard waste, and other compostables collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations.

C. Record of Non-Collection. When any solid waste, recyclables, yard waste, or other compostable material deposited for collection is not collected by the Franchisee because it fails to meet the requirements of the Municipal Code, Franchisee shall leave a bilingual Spanish/English tag (provided at his cost) at least 3" x 6" in size, on which he has indicated the reasons for his refusal to collect the solid waste, recyclables, yard waste, or other compostable materials, giving reference to the section of the City Municipal Code which has been violated, and which gives grounds for his refusal as well as the Franchisee's address, phone number and business hours. This information shall either be in writing or by means of a check-list system.

D. In addition thereto, Franchisee shall maintain, at his place of business, a log book listing all complaints and taggings. Said log book shall contain the names and addresses of parties involved, date of such complaint or tagging, nature of same and date and manner of disposition of each case. Such log shall be kept so that it may conveniently be inspected by Director of Public Works upon request. Such log shall be retained for at least 2 years after the last entry.

5.12 Litter Abatement

A. Minimization of Spills. Franchisee shall use due care to prevent solid waste, recyclables, yard waste, and other compostables from being spilled or scattered during the collection or transportation process. If any solid waste, recyclables, yard

waste, and other compostables are spilled during collection, the Franchisee shall promptly clean up all spilled materials.

B. Clean Up. During the collection transportation process, the Franchisee shall clean up litter in the immediate vicinity of any solid waste, recyclables, yard waste, and other compostables storage area (including the areas where collection bins and debris boxes are delivered for collection).

C. Covering of Loads. Franchisee shall cover all open debris boxes and compactor openings during transport from one collection region of the City to another (over major arterials), to the disposal site or any processing facility. No material shall be transported to the disposal site or any processing facility in vehicle hoppers.

5.13 Collection, Transportation and Disposal of Solid Waste

A. Franchisee shall be obligated as set forth herein to provide for the lawful collection, transportation, and disposal of refuse from within the City to a permitted disposal site within the County of San Diego, consistent with the policies, goals, procedures and requirements of the San Diego Solid Waste Management Authority (the "Authority"), of which City is a member,. However, City reserves the right to direct Franchisee to change its collection, transportation, or disposal program, including but not limited to the location of the disposal site. Franchisee shall select the most cost-effective facility, including landfill disposal fees, operating and hauling costs, consistent with fulfilling all of Franchisee's other obligations hereunder.

B. Franchisee shall maintain accurate records of the quantities of solid waste, recyclables, yard waste, and other compostables or materials transported to the disposal site and will cooperate with City in any audits or investigations of such quantities. These records shall be made available to the City on a biannual basis to fulfill the City's obligatory documentation of AB 939 (as amended) efforts.

5.14 Processing of Solid Waste

Franchisee, prior to disposal, may direct any or all portions of the waste stream collected under this Agreement to a landfill, material recovery, composting, transformation or any other permitted solid waste processing facility, for processing of any materials contained therein. The City reserves the right to designate such a facility or may disapprove Franchisee's choice and such action, if Franchisee's costs are increased, entitles Franchisee to a special rate review as provided in this Agreement. Franchisee agrees to assist the City in identifying loads suitable for processing at material recovery, composting, transformation or any other solid waste processing facilities, and to modify routes or storage and collection procedures, to increase the quality or recoverability of materials generated by customers.

5.15 Vehicles

A. General. Franchisee shall provide a fleet of collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. Normal weekly route collections in residential service areas will be accomplished using no more than three (3) trucks in that neighborhood. When large and bulky items are placed for collection that are beyond the capacity of the normal servicing vehicles, a fourth truck may be dispatched for the special service. The Franchisee agrees to maintain each piece of its equipment used by it in the performance of this Agreement in good order and repair. So as to guarantee service is rendered on the scheduled day, Franchisee shall have available sufficient back-up vehicles for each type of collection vehicle used (i.e., residential, commercial and roll-off) to respond to equipment breakdowns, complaints and emergencies. The Director of Public Works reserves the right to inspect any and all of Franchisee's equipment upon reasonable notice to Franchisee. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with the noise abatement requirements of this Agreement.

B. Vehicle Identification. Franchisee's name, local telephone number, and a unique vehicle identification number designed by Franchisee for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high.

C. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

5.16 Cleaning and Maintenance

A. General. Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times. All trucks, trailers, and other conveyances or equipment, including bins, used to collect, haul, or transport garbage or rubbish shall at all times be kept clean, in good repair, and well and uniformly painted, to the satisfaction of the Director of Public Works. Each truck shall be so constructed and used that rubbish, garbage, oil, or grease will not blow, fall, or leak out of the truck onto the street. All refuse shall be transported by means of vehicles equipped with watertight bodies fitted with close fitting covers. Should any refuse be dropped or spilled in collecting, transferring, or transporting, it shall be immediately cleaned up. A broom and a shovel shall be carried on each truck at all times for this purpose.

B. Cleaning. Vehicles used in the collection of solid waste, recyclables, yard waste, and other compostables shall be thoroughly washed at a minimum of one (1) time per week, and thoroughly steam cleaned on a regular basis so as to present a

clean appearance and minimize odors. All vehicles shall be painted at least once every three (3) years, although the City may require the painting of any vehicle which does not present a satisfactory appearance, as deemed by the Director of Public Works, at any time. All graffiti shall be removed immediately. The Director of Public Works may inspect vehicles at any time to determine compliance with sanitation requirements. Franchisee shall make vehicles available to the County Health Department for inspection.

5.17 Solid Waste Containers

A. Residential. Until implementation of any automated service program as may later be directed, the standard size container for residential services shall not exceed 32 gallons, unless otherwise agreed to by the City Council. The combined weight of the container and contents shall not exceed 50 pounds unless the container is designed for mechanical lifting and Franchisee is equipped for mechanical lifting. Franchisee shall affix to every metal or plastic refuse container which no longer holds solid waste, recyclables, yard waste, or other compostables without spilling or leaking, a bilingual, Spanish/English tag advising that such a container is unsuitable for presenting solid waste, recyclables, yard waste, or other compostables for collection and the continued use of that container will result in its disposal. All cartons and boxes used to contain solid waste will be disposed of along with their contents.

B. Non-Residential. Franchisee shall provide bins and debris boxes for storage of solid waste which shall be designed and constructed to be water tight and prevent the leakage of liquids. All containers with a capacity of one cubic yard or more shall meet applicable federal regulations on solid waste bin safety. All containers shall be painted the Franchisee's standard color and shall prominently display the name and telephone number of the Franchisee in letters and numbers no less than two and one-half (1 1/2) inches high. To attain certain economies, some customers may request specialized services such as compactors, roll-off, or custom-built containers, etc. The sale, lease, rental of such equipment, or their provision by the customer, may be negotiated by the customer and the Franchisee. Information relating to any such agreements shall be forwarded to the Director of Public Works.

C. Cleaning, Painting, Maintenance. Franchisee shall maintain all containers (other than containers for residential premises) on a regular basis so as to present a clean appearance. All containers shall be maintained in a functional condition.

D. Repair and Replacement. Franchisee shall repair or replace all customer-owned residential and non-residential containers damaged by collection operations, normal wear and tear excluded.

5.18 Personnel

A. General. Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

B. Driver Qualifications. All drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

C. Safety Training. Franchisee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, recyclables, yard waste, and other compostables or who are otherwise directly involved in such collection. Franchisee shall train its employees involved in solid waste, recyclables, yard waste, and other compostables collection to identify, and not to collect, hazardous or infectious waste.

D. No Gratuities. Franchisee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of solid waste, recyclables, yard waste, and other compostables under this Agreement.

E. Employee Appearance and Conduct. All employees, while engaged in the collection or gathering solid waste, recyclables, yard waste, and other compostables within the City, shall be attired in suitable and acceptable uniforms which are subject to approval by the Director of Public Works. Franchisee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all appropriate corrective measures.

F. Provision of Field Supervision. Franchisee shall designate one qualified employee as on-site supervisor of field operations who shall be equipped with a vehicle and mobile telephone. The field supervisor will devote all of his or her time in the field, within the City of Encinitas, checking on collection operations, coordinating improvements to service, resolving field problems, and responding to complaints of customers either in person or by telephone. The field supervisor will be expected to respond to complaints within two working hours and to correct field deficiencies within one working day.

5.19 Hazardous Waste

A. General. If the Franchisee determines that waste placed in any container for collection or delivered to any facility is hazardous waste or infectious waste or other waste that may not legally be disposed of at the disposal site or presents a hazard to Franchisee's employees, the Franchisee shall have the right to refuse to accept such waste. The customer will be contacted by the Franchisee and requested to arrange proper disposal. If the customer cannot be reached immediately, the Franchisee shall, prior to leaving the premises, leave a bilingual, Spanish/English tag at least 3" x 5" indicating the reason for refusing to collect the waste, in which case a copy of the tag, along with the address of premises (and the name of the customer, if known) shall be delivered to the Director of Public Works on the following business day.

B. If the waste is delivered to the disposal site before its presence is detected and the customer cannot be identified or fails to remove the waste after being requested to do so, the Franchisee shall arrange for its proper disposal. The Franchisee shall make a good faith effort to recover the cost of disposal from the customer, and the cost of this effort, as well as the cost of disposal shall be chargeable to the customer. The Franchisee shall be entitled to include the costs incurred under this Section as an operating expense for purposes of Rate Review and shall include all sums recovered by it from customers as "Other Income."

C. Residential Household Hazardous Waste Collection. Franchisee shall coordinate with City and the County to assist in any residential household hazardous waste collection by the County. If the County fails to provide such service during the term of this Agreement, as requested by Director of Public Works, Franchisee shall arrange for an acceptable licensed household hazardous waste roundup at a central location within the City. Fees for this service shall be negotiated between the City and Franchisee.

5.20 Review of Performance and Quality of Service and Industry Changes

A. At the City Council's sole option, with sixty (60) days written notification to the Franchisee, it may conduct a public hearing at which the Franchisee shall be present and shall participate, to review the Franchisee's performance and quality of service and to provide for technological and regulatory changes. The reports required by this Agreement regarding customer complaints shall be utilized as one basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. These hearings may be scheduled by City Council at its discretion throughout the term of this Agreement, but not more often than annually.

B. Within thirty (30) days after the conclusion of the public hearing, the City shall issue a report with respect to the matters raised at the hearings. If any

noncompliance with this Agreement is found, Director of Public Works may direct Franchisee to correct the inadequacies in accordance with the terms of this Agreement. Any change in scope of services or equipment shall be reflected in an amendment to this Agreement.

ARTICLE 6. OTHER COLLECTION-RELATED SERVICES, STANDARDS AND AGREEMENTS

6.1 Billing

A. General. In consideration of the services and promises of the Franchisee, the City hereby delegates to the Franchisee the right and authority to collect from the persons served by the Franchisee the prices for such service as provided by this Agreement.

B. The Franchisee agrees that it shall neither charge nor collect any sum or sums in excess of, or in addition to, the amounts specified in this Agreement for any solid waste, recyclables, yard waste, and other compostables collection services made pursuant to this Agreement. The Franchisee agrees that the City shall be under no obligation to collect or to enforce collection of any sums due to the Franchisee for services rendered under this Agreement except as specifically provided in this Agreement or in the Encinitas Municipal Code, and Franchisee does hereby release the City from any and all liability for the payment of any sum or sums which may become due to the Franchisee for the collection or removal of solid waste, recyclables, yard waste, or compostables under the terms of this Agreement.

C. Billing Frequency. The Franchisee will bill residents no less frequently than on a quarterly basis. The Franchisee shall have the right to bill and collect for its services in advance of the rendering of services hereunder, but shall refund any unused portion equal to one month or more of the amount collected in the event of disruption, revision, or termination of the services or when residential premises are vacant for at least a one month period and prior notice of such vacancy has been given to the Franchisee.

D. Billing Inserts and Format.

1. As part of the billing procedure, the Franchisee shall provide envelopes, return envelopes, and messages with bilingual text (English and Spanish) related to solid waste management issues in with their normal billing to the extent such envelopes, return envelopes, and messages may be deemed necessary by the Director of Public Works. These messages shall include but are not limited to route maps, pick-up times, collection rules, holidays, information regarding community clean-up events, Christmas tree collection procedures, and similar information. The language of any such messages shall

be reviewed and approved by the Director of Public Works prior to their distribution. The costs of producing, printing and distributing such notices shall be the sole responsibility of the Franchisee.

2. Franchisee also agrees to insert with the billings, at City's expense for the incremental cost, mailers describing activities of the City government non-related to solid waste management issues. Director of Public Works will provide not less than thirty (30) days notice to Franchisee prior to the mailing date of any proposed mailing to permit Franchisee to make appropriate arrangement for inclusion of the City's materials. Director of Public Works will provide Franchisee the mailers at least (15) days prior to the mailing date.

3. The Director of Public Works shall have the right to request changes to the billing format to itemize certain appropriate charges or to otherwise reasonably clarify the billing. The Franchisee will cooperate with the City to revise its billing format as necessary to itemize appropriate charges from time to time, however, once any billing format is approved by the Director of Public Works, if any future changes to the billing format result in substantial costs, those costs may be recovered by Franchisee pursuant to this Agreement. Franchisee shall not itemize the franchise fee except with the written consent of City Council.

E. Billing Records. The Franchisee shall maintain copies of said billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by City. The Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

F. Failure to Pay. In the event that a customer is 6 months or more delinquent in the payment of collection fees and the Franchisee has made reasonable efforts to collect the delinquency, Franchisee shall refer the matter to the City for collection in accordance with the Municipal Code.

6.2 Annual Reports

The Franchisee shall submit annual reports with respect to its operations pursuant to this Agreement. The annual report shall be submitted not later than four (4) months following the end of the Franchisee's annual accounting period. The report shall be in a format which will allow the City to compare the operations of the Franchisee with the franchise fee paid and the appropriate adjustments to the franchise fee calculated pursuant to this Agreement. As part of the report, the Franchisee will calculate the actual franchise fee owed, shall set forth the quarterly franchise fee payments actually made, and shall show the appropriate additional franchise fees owed to the City or the over payments of the franchise fee actually owed for the annual

period. This report includes customer billing information by class of service and number of services.

6.3 Annual Audit

At the request of the City Manager, the reports submitted by the Franchisee pursuant to this Section may be audited and certified to by an independent certified public accounting firm mutually approved by the City Manager and the Franchisee. The Franchisee will bear the expense of said audit where a 4% discrepancy is discovered, but audit fees are allowed as an operating expense for rate setting purposes. If the Franchisee and City Manager fail to mutually agree on the selection of a certified public accounting firm within five (5) months prior to the end of the Franchisee's annual accounting period (for that accounting period), the City Manager shall submit the names of five certified public accounting firms from which the Franchisee shall select one. The Franchisee shall notify the City Manager of its choice not later than fifteen (15) days from the date of receipt of said list.

6.4 Record Keeping

The Franchisee shall maintain such accounting and statistical records as shall be necessary to develop the financial statements and reports prescribed by City.

6.5 Inspection by City

The Director of Public Works shall have the right to observe and review Franchisee operations and enter Franchisee's premises for the purposes of such observations and review at all reasonable hours with reasonable notice.

6.6 Public/Customer Service and Accessibility

A. Office Location. Franchisee shall provide a business office available to its customers for purposes of carrying out its obligations under this Agreement.

B. Office Hours. Franchisee's office shall be open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday. The office may be closed on Saturdays and Sundays and those holidays recognized by the Franchisee. The Franchisee shall notify the Director of Public Works of the holidays recognized by the Franchisee.

C. Availability of Representatives. A representative of the Franchisee shall be available at the Franchisee's office during office hours to communicate with the public in person and by telephone. A suitable drop box or collections mechanism shall be provided in the Franchisee's office for the receipt of payments.

D. Telephone. Franchisee shall maintain a toll-free telephone system in operation at its office at all times. Franchisee shall install telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Telephone service shall be provided from 8:00 a.m. to 5:00 p.m. Franchisee shall also maintain an after-hours telephone number for use during other than normal business hours. Franchisee shall have a representative or voice mail available at said after-hours toll-free telephone number during all hours other than normal office hours. If customers are unable with reasonable effort to reach Franchisee's office by phone, or are subject to waiting time "on hold" of more than two (2) minutes prior to reaching a customer service representative, the Director of Public Works may require that Franchisee install additional telephone lines or hire additional customer service representatives. The Directors of the Public Works and Fire Departments shall be provided with an emergency phone number.

E. Consumer Information. City Manager may direct Franchisee to prepare bilingual information cards containing information about the amounts of solid waste which will be collected, times for special collection events, curbside recycling and household hazardous waste drop-off programs, collection schedules, rates and complaint procedures. Franchisee shall distribute such information cards to the occupants of all residential and commercial premises. Information cards shall be revised and distributed if there is any material change in the information and, in any event, whenever a new customer is first billed. Information cards shall also be mailed to City residents upon request and shall be provided to the Chamber of Commerce in quantities required by the Chamber. Franchisee will submit printer's proofs of the information cards to the Director of Public Works prior to distribution and will incorporate City's comments in the final version distributed to the public.

6.7 Service Complaints

A. The Franchisee agrees to maintain a written log of all oral and written service complaints registered with the Franchisee from customers within the City. Franchisee shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints. Franchisee shall record in a separate log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This complaint log shall be retained by the Franchisee for at least one (1) year after the last entry and Director of Public Works may review the log at any reasonable time.

B. Franchisee shall respond to all complaints from customers within two hours and to correct deficiencies within twenty-four (24) hours, weekends and holidays excluded. In particular, if a complaint involves a failure to collect solid waste, recyclables, yard waste, and other compostables from a premises, required by this Agreement, Franchisee shall collect the solid waste, recyclables, yard waste, and other

compostables in question within such twenty-four (24) hour period, provided it has been delivered for collection in accordance with the City's Municipal Code or this Agreement.

6.8 City's Right to Change Scope of Work

The City may require changes in collection, disposal methods, or materials to be recycled and the Franchisee shall comply, provided that if such changes result in increased costs to the Franchisee, the Franchisee shall have a right to apply for a rate review and adjustment pursuant to this Agreement. Any additional charge shall be considered under the special rate review provisions of this Agreement.

6.9 Title to Solid Waste

It is expressly understood that all solid waste, recyclables, yard waste, and other compostables placed for collection becomes the property and responsibility of the Franchisee as soon as the items are placed for collection.

6.10 Nondiscrimination

Franchisee shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

6.11 Change in Collection Schedule

Franchisee shall notify Director of Public Works seven (7) days prior to, and residential customers not later than the day prior to, any change in residential collection operations which results in a change in the day on which solid waste, recyclables, yard waste or compostables collection occurs. Franchisee will not permit any customer to go more than seven (7) days without service in connection with a collection schedule change.

6.12 Report Accumulation of Solid Waste: Unauthorized

Franchisee shall direct its employees to note (1) the addresses of any premises at which they observe that solid waste is accumulating and is not being delivered for collection; and (2) the address, or other location description, at which solid waste has been dumped in an apparently unauthorized manner. Franchisee shall deliver the address or description to Director of Public Works within three (3) working days of such observation in order to protect health, safety and welfare.

ARTICLE 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989 (AB 939): OPERATIONAL AND REPORTING REQUIREMENTS

7.1 Curbside Recycling Program

City presently has in place a residential curbside recycling and yard waste collection program. City also has in force an Ordinance that requires commercial/industrial recycling. Franchisee shall keep these programs in place on the same terms and conditions until such time Franchisee develops and City Council approves an equivalent or improved recycling program.

7.2 Other Recycling Programs

A. In addition to the residential curbside and commercial/industrial recycling programs, within 180 days after execution of this Agreement, Franchisee shall develop and, following City Council approval, implement programs to implement the findings and goals of the AB 939 Source Reduction and Recycling Element (SRRE), including but not limited to:

- Public Recycling Bins for a Limited Number of Parks, Apartments, Commercial Areas or Other Strategic Community Areas to be Provided Without Charge to the City
- City Hall Recycling Program
- Debris Box Materials
- Commercial Cardboard
- Bar and Restaurant Glass
- Complete Commercial Green Waste
- Office Paper and Other Business recycling
- Recycling/diversion at the Source

B. The Franchisee and Director of Public Works shall agree on the schedule, format, and content for the additional programs to be presented to the Council. Any rate increase for such programs shall be considered as set out in this Agreement. From time to time "grant" monies for special programs may be made available to the City. These funds will be actively pursued by the City to improve its programs for solid waste diversion and will be used in concert with the Franchisee to offset expenses to customers under the guidelines and administrative procedures established for such programs by the Director of Public Works.

7.3 Solid Waste Diversion

Given the full cooperation of the City, Franchisee guarantees to the City that the diversion requirements of applicable state and federal law will be fully satisfied at all times during the initial term and any extended term of this Agreement.

7.4 Annual AB 939 Reporting Requirements

A. To assist the City in its planning to meet the requirements of AB 939 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, Franchisee shall:

- 1. Record on a monthly basis the daily quantities of solid waste collected and disposed at each disposal facility used by the Franchisee.
- 2. Record on a monthly basis the daily quantities of recyclables, yard waste, other compostables, and any materials destined for transformation facilities collected according to: (1) material types consistent with the City's Solid Waste Generation Study; (2) program; and (3) processing facility/markets to which the materials are delivered.

B. All disposal and diversion tonnages shall also be further disaggregated according to the source of generation as follows:

1. Residential Solid Waste - Solid waste originating from single- and multiple-unit dwellings. Single-unit tonnages are to be accounted for separately from multi-unit tonnages. In those cases where multi-unit accounts are commingled with material from other waste sources, Franchisee will be responsible for developing a reasonable methodology for estimating such multi-unit tonnages which is acceptable to the Director of Public Works (e.g., [container yardage] X [frequency] X [% of capacity] X [assumed density]).

2. Commercial Solid Waste - Solid waste originating from stores; business offices; commercial warehouses; hospitals; educational, health care, military, and correctional institutions; nonprofit research organizations; and government offices.

3. Industrial Solid Waste - All solid waste placed in debris boxes.

4. Other Sources - Solid waste originating from such sources as state and national parks and recreational areas (Note: estimation of self-haul waste which is classified as an 'Other' source will be the responsibility of City).

C. Franchisee shall also provide to the Director of Public Works an annual Waste Disposal and Diversion Report based upon these daily records by the 31st of

January (and at other times as may be requested). This report shall include total tonnages disposed by waste source and disposal facility, and total tonnages diverted by waste source, material type, and program and the specific solid waste processing facility or market to which the materials were delivered. Franchisee shall try to include reports on private recycling efforts so that these will be counted toward City's diversion goals.

D. All reports shall be adequate to meet City's reporting requirements to the California Integrated Waste Management Board, and to the County of San Diego throughout the Term of this Agreement. Franchisee shall also provide any other reports required by AB 939.

7.5 AB 939 Staffing

The Franchisee shall dedicate adequate staff to implement and monitor AB 939 requirements on behalf of City, throughout the term of this Agreement, in accordance with the City's integrated waste management programs identified in the Source Reduction and Recycling Element (SRRE).

7.6 Public Outreach Program

The Franchisee will develop and implement a public education program on source reduction, reuse, recycling, composting and secondary materials usage and availability as required by the Public Education Component of the City's SRRE and AB 939. This requirement may include, but is not limited to public and school presentations, mailers, and brochures.

7.7 Waste Composition Studies

Franchisee agrees to cooperate with City on all future waste composition studies, at no additional cost to the City, including but not limited to, modification of routes or collection of individual accounts identified by the Director of Public Works for purposes of obtaining desired waste composition data. Franchisee further agrees to deliver a reasonable number of targeted loads to a nearby location or locations specified by the Director of Public Works as reasonably agreed by Franchisee for purposes of conducting waste composition analysis.

7.8 Use of Recycled Materials

Whenever possible Franchisee shall use recycled paper as part of all publicity, billing, and other management and operational activities associated with the performance of this Agreement. Opportunities for use of other recycled materials,

including but not limited to the purchase of collection containers with recycled material content shall also be pursued, with a cost/benefit analysis provided to the Director of Public Works.

7.9 Change in Laws

Franchisee shall develop and, upon the City Council's approval, implement within a timely manner, programs to meet new requirements of AB 939 or similar state and federal laws. Franchisee may request a rate increase or decrease as per the Section entitled Special Rate Review for additional duties required hereunder, if the Franchisee can show that the new duties will cost more or less than revenues collected under the current rate structure.

ARTICLE 8. SERVICE RATES AND REVIEW

8.1 Franchisee's Rates: General

A. Franchisee shall perform the responsibilities and duties described in this Agreement in consideration of the exclusive right to collect from and charge customers for solid waste, recyclables, yard waste, and other compostables services rendered, at rates fixed by the City Council from time to time. Franchisee does not look to the City for payment of any sums under this Agreement.

B. Franchisee may charge and receive fees for performing special services (e.g., the hauling and disposal of bulky waste in excess of or dissimilar to that collected weekly, servicing locked bins, scouting service for curbside placement, etc.) as agreed upon in separate contracts between Franchisee and each customer requesting such special services.

8.2 Rate Review

Rates may only be increased because of landfill disposal fee increases or cost of living increases or because of extraordinary circumstances in accordance with this Section. The Franchisee may submit an application for rate review based upon the Section on Rate Formula not more often than once annually. Application for rate review because of extraordinary circumstance may be submitted at anytime according to the Section of this Agreement on Special Rate Review. The Franchisee shall submit any and all data requested by and in the format prescribed by the Director of Public Works. The application shall show how the rate increase requested meets the formula set out this Agreement and shall demonstrate the need for such an increase.

8.3 Rate Formula

Any rate adjustment necessitated by cost of living or landfill disposal fee changes will be calculated according to the following provisions:

A. Formula. Rate adjustments will be calculated based upon the following formula and definitions of terms:

$$TR_{new} = ((LD_{old} \times (1.0 + ((TF_{new} - TF_{old})/TF_{old}))) + (OE_{old} \times (1.0 + CPI))) \times 1.053$$

TR = Total Rate for a specified service
LD = Part of Rate attributable to landfill disposal fees
TF = Documented per ton landfill disposal fee
OE = Part of Rate attributable to Franchisee operating expenses including: general operating expenses, overhead, profit, etc.
CPI = San Diego Region Consumer Price Index

B. Landfill Disposal fees.

1. The landfill disposal fee component is considered separately from the base rate. No CPI increase will be applied to the landfill disposal fee component. Landfill disposal fee increases or decreases are intended to be "pass through" expenses and will be dealt with accordingly in the review process by the City Council.

2. The monthly rate may be adjusted upward or downward due to the Franchisee's increased or decreased costs resulting from changes in the landfill disposal fees and any duly authorized fees, assessments or taxes to be collected along with landfill disposal fees.

3. Franchisee shall notify the Director of Public Works of the notification of the increase or decrease. Along with such notification, Franchisee shall provide a revised schedule of rates showing the effect of any such increase or decrease on the monthly rate per class of service and Franchisee shall confirm that the disposal location chosen by Franchisee (unless said location is specifically directed by City to be used) is the most cost-effective for tipping costs giving due consideration to the impact on operating and hauling costs. Franchisee shall provide any additional information requested by the City Manager or City Council at that time.

4. The City Manager shall place notice of any such an increase upon the agenda of the City Council. The City Council shall review the proposed increase and review the reason(s) for the change with the Franchisee. The City Council shall not deny any such increase unless it questions the authority of the landfill operator or another political body to impose such an increase, fee, assessment or tax or finds that any increase is not cost-effective because of

Franchisee's designation of a disposal facility. The City Council may reduce the proposed increase if it does not accurately reflect the cost increase to the Franchisee of the landfill disposal fee increase.

5. Once reviewed by the City Council, any increase shall be effective as of its effective date to Franchisee. Franchisee shall notify all customers in advance of such an increase by utilizing notices in billings, the news media and other appropriate means. Director of Public Works and Franchisee shall work together to determine the appropriate form of notification.

6. Franchisee shall implement any decrease in the landfill disposal fee upon its effective date without prior City Council review or approval. Thereafter, City Council shall review and approve or modify Franchisee's rate adjustment resulting from said decrease.

C. Base Rate. The base rate subject to any CPI adjustments will be the monthly rates minus landfill disposal fees for landfills, material recovery facilities, and transfer stations and any costs, fees, or tax authorized by any government agency. The new base rate will be the result of applying the adjustment calculated. The resulting new base rate will be the base rate unless and until properly adjusted pursuant to this Agreement. The new monthly rates will be the sum of the base rate and the landfill disposal fees, costs, fees, and/or taxes specified.

D. Applicable CPI Adjustment. The increase or decrease in the Consumer Price Index (CPI) for the previous 12-month period (May through April) for All Urban Consumers in the San Diego area, will be applied to the base rate. Thereafter, the CPI adjustment, when approved, will be effective July 1 of each year.

8.4 Special Rate Review.

A. The Franchisee may apply to the City Council for consideration of a special rate review should an event or circumstance arise which jeopardizes the economic operation of the Franchisee. A special application may be considered at the option of the City Council if:

1. An event or circumstance occurs which was not reasonably foreseen or beyond Franchisee's control, and is extraordinary and not a usual business risk of the Franchisee, or

2. It is necessary for the Franchisee to make a substantial change in its operation, or substantial capital investment in order to perform its obligations under this Agreement or meet the requirements of applicable law, or

3. Changes to operations are mandated as provided by this Agreement.

B. The Franchisee will have the right to apply for rate review and adjustment for changes in disposal methods or sites mandated or authorized by any higher political body which may now or in the future have legal jurisdiction.

C. The City Council or City Manager may initiate a special rate review at its option. Any rate review, whether initiated by the City Council, City Manager or the Franchisee, will follow the format specified for a regular rate review. If initiated by the Franchisee, the complete application must be submitted at least sixty (60) days prior to the date it may become effective unless the Franchisee can demonstrate to the satisfaction of the City that circumstances beyond their control warrant waiver by the City of this requirement. If initiated by the City Council or City Manager, the Franchisee shall submit requested data within sixty (60) days of the date that notice is provided to the Franchisee. In any special rate review the rate changes will follow the basic principles of the rate formula as identified in this Section, however, some aspects of such reviews may demand negotiations with the City Manager or his designated representative.

8.5 Publication of Rates

Following City Council approval of a rate adjustment, the Franchisee shall provide immediate written notice to subscribers of rate changes, which notice may be provided with, or as part of a regular billing. Franchisee may provide a schedule of landfill disposal fees along with customer billings.

ARTICLE 9. INDEMNITY, INSURANCE, BOND

9.1 Indemnification of City

A. Indemnification Generally. Franchisee agrees to defend, with counsel to be agreed upon by the City, indemnify, and hold harmless, City and its agents, officers, servants, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including but not limited to, injury to Franchisee's or City's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by acts or omissions of Franchisee, or its agents, officers or employees, in the performance of this Agreement, or in performing the work or services herein, and all costs and expenses of investigating and defending against same; provided, however, that Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence, willful misconduct, or intentional tort of the City, its agents, officers or employees, determined by a court of competent jurisdiction.

B. Hazardous Materials Indemnification. Franchisee agrees to defend, with counsel to be agreed upon by the City, indemnify, and hold harmless, City and its agents, officers, servants, and employees and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or hazardous wastes at any disposal or processing facility where solid waste is or has been transported, transferred, processed, stored, disposed of or has otherwise come to be located by Franchisee or its activities pursuant to this Agreement resulting in a release of any hazardous substance into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," also known as "Superfund," 42 U.S.C. §9607(e), and California Health and Safety Code §25364, to defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, other statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this Agreement.

The requirements of this Subsection need not be separately insured by Franchisee.

9.2 Insurance

A. Minimum Scope of Insurance. Franchisee shall maintain the following insurance:

1. Comprehensive General Liability and Insurance Services Office covering Broad Form Comprehensive General Liability.
2. Automobile Liability.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance: Franchisee shall maintain limits no less than:

1. Comprehensive General Liability: \$5,000,000 combined single limit per occurrence for bodily injury and property damage.
2. Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California.

C. Deductibles and Self-Insured Retention. Any significant deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officials, employees, agents or volunteers; or the Franchisee shall procure an additional letter of credit or bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage
 - a. Franchisee shall obtain, and during the term of this Agreement, shall maintain policies of liability, automobile liability, public liability, general liability, and property damage insurance from an insurance company authorized to be in business in the State of California, in an insurable amount of not less than \$5,000,000 for each occurrence. The insurance policies shall provide that the policies shall provide that the policies remain in full force during the life of this Agreement and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.
 - b. The City shall be named as an additional insured by endorsement on these policies.
 - c. The Franchisee's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
 - d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or volunteers.

e. Coverage shall state that the Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. **Workers' Compensation and Employers Liability Coverage** The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, and volunteers for losses arising from work performed by the Franchisee for the City.

E. Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Required Endorsements Each insurance policy shall contain appropriate endorsements, as specified by the City.

G Delivery of Proof of Coverage. Simultaneous with the execution of this Agreement, Franchisee shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City.

ARTICLE 10. CITY'S RIGHT TO PERFORM SERVICE

10.1 General

A. In addition to any and all other legal or equitable remedies, in the event that the Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to the appropriate solid waste management facility, or in accordance with all of the terms of this Agreement, any or all solid waste, recyclables, yard waste, or other compostables which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, solid waste, recyclables, yard waste, or other compostables should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then the City Manager shall have the right, but not the obligation, without payment to Franchisee upon twenty-four (24) hours prior written notice to Franchisee during the period of such emergency as determined by City Manager, (1) to cause to be performed, such services itself with its own or other personnel without liability to Franchisee; and/or (2) to take possession of any of all of Franchisee's land, equipment and other property used or useful in the collection and transportation of solid waste, recyclables, yard waste, and compostables and to use such property to collect and transport any solid waste, recyclables, yard waste, and compostables generated within the City which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement. Notice of the

Franchisee's failure, refusal or neglect to collect and transport solid waste in accordance with all of the terms of this Agreement may be given orally by telephone to the Franchisee at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Franchisee within twenty-four (24) hours of the oral notification.

B. Franchisee further agrees that in such event:

1. It will fully cooperate with City to effect the transfer of possession of property to the City for City's use.
2. It will, if City Manager so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
3. The City shall assume responsibility for the proper and normal use of such equipment and facilities while in its possession.
4. Franchisee shall provide all necessary billing information and Franchisee and City Manager shall determine how to bill, in what amounts, and the distribution of amounts received.

C. The City's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) will not create any liability on the part of City to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Franchisee is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents, or volunteers acting under this Section, and (4) does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

10.2 Duration of City's Possession

City has no obligation to maintain possession of Franchisee's property and/or continue its use in collecting and transporting solid waste for any period of time and may, at any time, in its sole discretion, relinquish possession to the Franchisee.

ARTICLE 11. DEFAULT AND REMEDIES

11.1 Events of Default

Each of the following shall constitute an event of default ("event of default") hereunder:

A. Failure to Perform. Franchisee fails to perform its obligations under this Agreement, as it may be amended from time to time, and: (1) if the failure or refusal of Franchisee to perform as required by this Agreement is not cured within two (2) business days after receiving notice from the City specifying the breach; or (2) in the case of any other breach of this Agreement, the breach continues for more than thirty (30) calendar days after written notice from the City Manager for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, Franchisee shall not be in default of this Agreement if Franchisee shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

B. Misrepresentation. Any representation or disclosure made to City by Franchisee in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement;

C. Seizure or Attachment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment and facilities of such proportion as to substantially impair Franchisee's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within seventy-two (72) hours excluding weekends and holidays.

D. Financial Insolvency. Franchisee files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Franchisee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) for any part of the Franchisee's operating assets or any substantial part of Franchisee's property, or makes any general assignment for the benefit of Franchisee's creditors, or shall fail generally to pay Franchisee's debts as they become due or shall take any action in furtherance of any of the foregoing;

E. Court Decisions. Any court having jurisdiction shall enter a decree or order for relief in respect of the Franchisee, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or

Franchisee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Franchisee or for any part of the Franchisee's operating equipment or assets, or order the winding up or liquidation of the affairs of Franchisee.

F. Reasonable Assurances of Performance. Franchisee fails to provide reasonable assurances of performance as required under this Section.

11.2 Right to Terminate Upon Default

Upon a default by Franchisee, after any required notice, the City Council shall have the right to terminate this Agreement without need for any hearing, suit or legal action.

11.3 Possession of Property Upon Termination

In the event of termination for default, the City shall have the right to take possession of and use in the provision of services enumerated under this Agreement any and all of Franchisee's land, equipment, and other property (excepting solid waste) used or useful in the collection and transportation of solid waste and the billing and collection of fees for these services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of solid waste collection services, which may include the award of an agreement with another waste hauling company, but in no case for more than 45 days.

If the City retains possession thereof after the period of time for which Franchisee has already been paid by means of bills issued in advance of providing service for the class of service involved, the Franchisee shall be entitled to the reasonable rental value of such property. Franchisee shall furnish the City with immediate access to all of its business records related to its billing of accounts for services.

11.4 City's Remedies Cumulative: Specific Performance

A. The City's right to terminate this Agreement under this Section and to take possession of the Franchisee's properties under this Section are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

B. By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by City to the Franchisee, the remedy of damages for a breach hereof by Franchisee may be inadequate and City shall be entitled to injunctive relief.

11.5 Excuse from Performance

A. The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God," war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee's employees or directed at Franchisee is not an excuse from performance and Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events; provided, that in the case of labor unrest or job action directed at a third party (e.g. customer) over whom Franchisee has no control, the inability of Franchisee to make collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Franchisee's employees while making collections or to make reasonable accommodations with respect to container placement and point of delivery, time of collection or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make collections shall, to that limited extent, excuse performance and provided further than the foregoing excuse shall be conditioned on Franchisee's cooperation in making collection at different times and in different locations.

B. The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Notwithstanding, Franchisee in the event of a catastrophic event shall comply with City's emergency preparedness plan.

C. In the event that either party validly exercises its rights under this Section, the parties hereby waive any claim against each other for any damages sustained thereby.

D. Notwithstanding the foregoing, however, (1) the existence of an excuse from performance will not affect the City's rights under this Agreement; and (2) if Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, other than as the results of third party labor disputes where service cannot be provided for reasons described earlier in this Section, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days notice, in which case the provisions of this Section as it regards possession of property upon termination shall apply.

11.6 Right to Demand Assurances of Performance

If Franchisee (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (2) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and the City Manager believes in good faith that Franchisee's ability to perform under this Agreement has thereby been placed in substantial jeopardy, the City Manager may, at his option and in addition to all other remedies the City may have, demand from Franchisee reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Manager believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If Franchisee fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City Manager, such failure or refusal shall be an event of default for purposes of this Agreement.

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The parties intend that Franchisee shall perform the services required by this Agreement as an independent Franchisee engaged by City and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee or agent of Franchisee shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Franchisee shall have the exclusive control over the manner and means of conducting the solid waste, recyclables, yard waste, and other compostables collection services performed under this Agreement, and all persons performing such services. Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Franchisee nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

12.2 Compliance with Law

In providing the services required under this Agreement, Franchisee shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California and the City and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may

be enacted, issued or amended during the term of this Agreement and any extension thereof.

12.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Diego County.

12.5 Assignment

Except as otherwise provided by this Agreement, Franchisee shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any such assignment without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Franchisee's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of 50% or more of the outstanding common stock of Franchisee; unless the change results merely in one of several prior owners increasing his or her ownership. (iii) any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which Franchisee or any of its shareholders is a party which results in a change of ownership or control of 50% or more of the value or voting rights in the stock of Franchisee unless the change results merely in one of several prior owners increasing his or her ownership; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. For purposes of this Section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

12.6 Subcontracting

Franchisee shall not engage any subcontract for collection of solid waste, recyclables, yard waste, or other compostables without the prior written consent of the City which consent shall not be unreasonably withheld or delayed. All of the requirements of indemnity, insurance shall apply to subcontractors.

12.7 Binding on Successors

The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

12.8 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

12.9 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement, except the payment of monies so accepted and only to the extent of monies so owing.

12.10 Franchisee's Investigation

The Franchisee has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding this Agreement and the work to be performed by it.

12.11 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall all, except as otherwise specifically provided, be in writing and shall be effective when personally delivered to a representative of the parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: Director of Public Works
City of Encinitas
505 S. Vulcan Ave.
Encinitas, CA 92024

If to Franchisee: President/CEO
Mashburn Waste & Recycling Services, Inc
P.O. Box 6907
San Marcos, CA 92079

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

12.12 Representative of the Parties

The Franchisee shall by letter, upon execution of this Agreement, designate in writing a responsible officer who shall serve as the representative of the Franchisee in all matters related to this Agreement and shall inform the Director of Public Works in writing of such designation and of any limitations upon his or her authority to bind the Franchisee. The City may rely upon actions taken by such designated representative as action of the Franchisee unless they are outside the scope of the authority delegated to him/her by the Franchisee as communicated to Director of Public Works.

12.13 Transition to Next Franchisee

At the point of transition, Franchisee will cooperate with City and subsequent Franchisee(s) to assist in an orderly transition which will include Franchisee providing route lists and billing information.

12.14 Conflict of Interest

Franchisee shall annually file a Conflict of Interest Statement with the City in accordance with the City's Ordinance[cite].

12.15 Effect on Other Agreements

This Agreement supersedes the Agreement dated January 1, 1992 between the City and Franchisee which will be terminated upon the Effective Date of this Agreement.

ARTICLE 13. MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

This Agreement represents the full and entire Agreement between the parties with respect to the matters covered herein.

13.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

13.3 References to Laws

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or rectified, unless otherwise specifically provided.

13.4 Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

13.5 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

13.6 Severability

If any provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.7 Counterparts

This Agreement may be executed in counterparts each of which shall be considered an original.

DATED: April 26, 1996

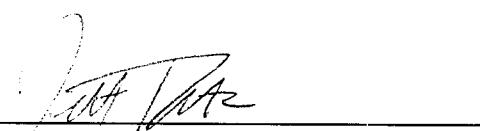
CITY OF ENCINITAS:

DATED: April 26, 1996

FRANCHISEE:
Mashburn Waste & Recycling Services, Inc.
A California Corporation



By Lauren M. Wasserman
its City Manager



By Jeff Ritchie
its President

AMENDMENT NO. 1
TO THE SOLID WASTE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF ENCINITAS AND EDCO WASTE AND RECYCLING SERVICES
DATED APRIL 25, 1996

This Amendment No. 1 Agreement to the Solid Waste Franchise Agreement between the City of Encinitas and EDCO Waste and Recycling Services dated April 25, 1996 ("Franchise Agreement") is made between the City of Encinitas, hereinafter referred to as "City," and EDCO Waste and Recycling Services, hereinafter referred to as "EDCO", and together sometimes collectively referred to hereinafter as "Parties." The date of this Agreement is retroactive to August 1, 2000.

Whereas, on April 24, 1996 the Encinitas City Council directed the City Manager to execute the Franchise Agreement and the City Manager subsequently did so;

Whereas, the Parties may only amend the Franchise Agreement by a writing signed by both parties pursuant to Section 13.5 of the Franchise Agreement;

Whereas, on August 22, 2000, the Encinitas City Council directed the City Manager to take action to cause certain amendments to the Franchise Agreement under specific terms and conditions; and

Whereas, the Parties desire to memorialize said amendments in the form of this Amendment No. 1 Agreement.

NOW, THEREFORE, IT IS AGREED between the Parties that the Franchise Agreement is hereby amended as follows:

1. Section 3.2 of the Franchise Agreement is hereby amended to read as follows:

"The Term of this Agreement shall be extended through August 22, 2010."

2. Section 3.3 is hereby amended to read as follows:

"The Franchisee agrees that the City, at its option, may extend this Agreement on the same terms and conditions. The option to extend will be for an additional four years beginning August 23, 2010 through August 22, 2014. City may exercise this option only by delivering written notice to the Franchisee on or before February 1, 2009."

3. A new sentence is hereby added to Section 4.3 to read as follows:

“In addition to Franchise Fees required pursuant to this Section, Franchisee agrees to pay City an amount not less than \$200,000 annually for uses determined by City. Franchisee shall pay said amount in 12 monthly installments of equal amounts no later than the tenth day of the each month beginning August 1, 2000, through August 22, 2010.”

4. A new Section 5.6.C is hereby added to read as follows:

“C. The Franchisee agrees to provide the City with industrial roll-off collection and disposal services in an amount not to exceed \$200,000 annually as determined by multiplying the total number of loads by the per load rate and disposal fee in effect at the time. Once the annual \$200,000 service limit has been reached, the Franchisee shall notify the Public Works Director and make alternative arrangements. Pursuant to this section, the City may request waste collection, disposal and recycling services for up to six community events annually sponsored, at least in part, by the City.”

5. Section 5.8.A is hereby amended to read as follows:

“On at least one day of each calendar year during the term of this Agreement, Franchisee shall coordinate and provide a “Community Clean-up Day.” Franchisee shall accept and dispose from residential customers on the designated clean-up day(s), at no cost to the residents, items such as, but not limited to, the following and other similar items: Furniture, appliances, residential wood waste and other large and bulky items not collected on regular residential routes due to their size or the volume of the material. Each year, the Public Works Director and the Franchisee shall evaluate the public need for a second clean-up day annually and schedule such an event as deemed necessary by the Director of Public Works.”

6. Section 7.6 is hereby amended to read as follows:

“The Franchisee shall develop and implement a public education program on source reduction, reuse, recycling, composting and secondary materials usage and availability as required by the Public Education Component of the City’s SRRE and AB 939. This requirement may include, but is not limited to, public and school presentations, mailers and brochures. Franchisee agrees to include a periodic reminder in printed information provided to residents that recycling containers are available at no additional charge. Franchisee agrees to expend not less than \$15,000 annually on said program.”

7. The language “CPI = San Diego Region Consumer Price Index” in Section 8.3.A is hereby amended to read as follows:

“CPI = Los Angeles-Anaheim-Riverside CPI for All Urban Consumers”

8. Section 8.3.B is hereby amended to read as follows:

B. Landfill Disposal Fees.

1. The landfill disposal fee component shall be considered independent of the base rate. No CPI increase shall be applied to the landfill disposal fee component, except as provided for under the terms of the Regional Solid Waste Association (RSWA) Disposal Agreement of which the City is a party thereto. Landfill disposal fee increases or decreases are intended to be 'pass through' expenses and will be dealt with accordingly in the review process by the City Manager or his or her designee.
2. The monthly rate may be adjusted upward or downward due to the Franchisee's increased or decreased costs resulting from changes in the landfill disposal fees and any duly authorized fees, assessments or taxes to be collected along with disposal fees pursuant to the terms of the RSWA Disposal Agreement which the City is a party thereto.
3. Franchisee shall notify the Director of Public Works of the notification of the increase or decrease. Along with such notification, Franchisee shall provide a revised schedule of rates showing the effect of such increase or decrease on the monthly rate per class of service. Franchisee shall provide any additional information requested by the Director at that time.
4. The Director of Public Works shall review the proposed increase and the reasons for the change with the Franchisee. The City Manager or the Director of Public Works shall have the authority to review any rate change pursuant to the provisions of the RSWA Disposal Agreement which the City is a party thereto.
5. Upon review and approval by the City Manager, any increase shall be effective as of its effective date to Franchisee. Franchisee shall notify all customers in advance of such an increase by using notices in billings, the news media and other appropriate means. The Director of Public Works and the Franchisee shall work cooperatively to determine the appropriate form of notification."

9. Section 8.3.D is hereby amended to read as follows:

"The increase or decrease in the Consumer Price Index (CPI) for the previous 12-month period (December through November) for All Urban Consumers in the Los Angeles-Anaheim-Riverside Index area shall be applied to the base rate. Thereafter, the CPI adjustment, when approved, shall be effective July 1 of each year. Franchisee agrees that the maximum allowable CPI adjustment applied in the rate formula from year to year shall not exceed 4.5%. The City Manager or his or her designee shall have the sole authority to review and approve rate adjustments resulting from the application of the CPI formula. If a dispute arises between the parties concerning the application of the CPI formula, the final resolution of such dispute shall be determined by the City Council."

10. A new Section 8.4.4 is hereby added to the Agreement to read as follows:

"In the event that the Franchisee requests a special rate review, the City shall have the right to review the reasonableness of the rates charged by the Franchisee in comparison to other San Diego County jurisdictions."

11. Section 9.1.A is hereby renumbered to 9.1.A.1 and a new section 9.1.A.2 is hereby added to read as follows:

"A. 2. Indemnification Specifically. Franchisee shall indemnify, defend and hold harmless City from and against all fines and/or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirements under AB 939 or other applicable local, state or federal laws are not complied with by the City regarding the waste stream collected pursuant to this Agreement subject to the following restrictions:

- a. The Franchisee's obligations contained in this section shall not be enforceable if the Board imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 et seq. of the California Public Resources Code.
- b. Any Board imposed penalty based upon the City's failure to meet the solid waste diversion requirement imposed by Section 41780 et seq. of the California Public Resources Code resulting in whole or in part from the Franchisee's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the City and Franchisee. Further, Franchisee shall not be liable for obligations under this section to the extent the Franchisee's breach or noncompliance resulted from the action or failure to act by City."

12. Except as otherwise amended by the specific terms of this Amendment No. 1 Agreement, each and every term, condition and obligation contained in the Franchise Agreement is reaffirmed and remains in full force and effect pursuant to said Agreement.

13. This Amendment No. 1 Agreement may be executed in counterparts each of which shall be considered an original.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1
Agreement which shall become effective retroactive to August 1, 2000.

City of Encinitas

Date Nov. 9, 2000

By Chuck Oh
Title Mayor

EDCO

Date 11-9-00

By Edward D. Brown
Title EDD

By Sasha Den
Title V/P

AMENDMENT NO. 2
TO THE SOLID WASTE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF ENCINITAS AND EDCO WASTE AND RECYCLING SERVICES
DATED APRIL 25, 1996

This Amendment No. 2 Agreement to the Solid Waste Franchise Agreement between the City of Encinitas and EDCO Waste and Recycling Services dated April 25, 1996 ("Franchise Agreement") is made between the City of Encinitas, hereinafter referred to as "City," and EDCO Waste and Recycling Services, hereinafter referred to as "EDCO," and together sometimes collectively referred to hereinafter as "Parties." The date of this Agreement is November 19, 2003.

Whereas, on April 24, 1996 the Encinitas City Council directed the City Manager to execute the Franchise Agreement and the City Manager subsequently did so; and

Whereas, the Parties may only amend the Franchise Agreement by a writing signed by both parties pursuant to Section 13.5 of the Franchise Agreement; and

Whereas, on August 23, 2000, the Encinitas City Council directed the City Manager to take action to cause certain amendments to the Franchise Agreement under specific terms and conditions and the City Manager subsequently did so; and

Whereas, on November 19, 2003, the Encinitas City Council directed the City Manager to take action to cause certain amendments to the Franchise Agreement under specific terms and conditions; and

Whereas, the Parties desire to memorialize said amendments in the form of this Amendment No. 2 to the Franchise Agreement.

NOW, THEREFORE, IT IS AGREED between the Parties that the Franchise Agreement is hereby amended as follows:

1. Section 3.2 and 3.3 of the Franchise Agreement is hereby amended to read as follows:

"The term of this Agreement shall be extended through August 22, 2014, provided however, that commencing on January 1, 2011 and every year thereafter, automatic one year extensions shall be applied to said Agreement so that the term of the Agreement shall remain a minimum of three years.

Should either party desire that the automatic one-year renewal and extension provision be terminated, such party shall give the other written notice of such termination thirty (30) days prior to January 1 of any year of the Agreement. Such notice will terminate the automatic one-year renewal and extension

provision, and the Agreement shall remain in effect for the balance of the term then outstanding.

It is the intent of the City, that if the Franchisee's services are being performed satisfactorily to the City, this Agreement will be extended as herein provided."

2. Section 4.3 is hereby amended to read as follows:

"In addition to Franchise Fees required pursuant to this Section, Franchisee agrees to pay City an amount not less than \$200,000 annually for uses determined by City. Franchisee shall pay said amount in 12 monthly installments of equal amounts no later than the tenth day of each month, beginning August 1, 2000, throughout the life of the Agreement."

3. Section 5.6.C is hereby amended to read as follows:

"C. The Franchisee agrees to provide the City with industrial roll-off collection and disposal services at City-owned facilities at no charge to the City. Pursuant to this section, the City may request waste collection, disposal and recycling services for up to six community events annually sponsored, at least in part, by the City."

4. A new Section 8.6 is hereby added to read as follows:

"The Franchisee, upon direction of the City, agrees to bill each residential and commercial customer subscribing to regularly scheduled waste collection service within City limits, any pass-through costs initiated and approved by the City. The fee, as established by City Council Resolution and/or Ordinance will be reflected as a separate line item on the residential and commercial billing statements for waste collection services and shall be a "pass through" cost to customers. Franchise fees normally paid to the City on gross revenue collected from waste collection billings will not apply to this fee.

The Franchisee shall pay the City, on a quarterly basis, all sums collected from this fee assessment during the previous billing cycle and provide accounting reports reflecting the fees billed and paid with each quarterly payment. The Franchisee shall not be responsible for any "pass through" fees not paid by the customers. All uncollected fees shall be the City's responsibility to recover from the ratepayer.

Notwithstanding any other provision of this Agreement, the collection of a pass-through fee is expressly contingent upon the establishment of the fee by formal action of the City Council."

5. Except as otherwise amended by the specific terms of this Amendment No. 2, each and every term, condition and obligation contained in this Franchise Agreement and

in Amendment No. 1 of said Agreement is reaffirmed and remains in full force and effect.

6. Amendment No. 2 shall be executed in counterparts each of which shall be considered an original.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 of the Franchise Agreement which shall become effective November 19, 2003.

City of Encinitas

Date 12/15/03

By Kathy Hall

Title City Manager

EDCO Waste & Recycling Services

Date 12/17/03

By Edward Bunn

Title Pres.

By Frederick Gove

Title V.P.